

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

-----X		
JEFF SCHMIDT,		
Plaintiff,		
-against-		Civil Action No.: 1:03-cv-1691
		(RMU)
AMERICAN INSTITUTE OF PHYSICS,		
Defendant.		
-----X		

TO: JEFF SCHMIDT
PLAINTIFF PRO SE
3003 Van Ness Street, NW #W406
Washington, DC 20008

DEFENDANT'S FIRST AMENDED ANSWER
TO PLAINTIFF'S COMPLAINT

Defendant, by and through its undersigned counsel, hereby responds to the allegations in Plaintiff's Complaint as follows:

1. Defendant denies the allegations contained in paragraph 1.

AS TO "FACTS"

2. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 2.
3. Defendant admits the allegations contained in paragraph 3.
4. Defendant denies the allegations contained in paragraph 4.

5. Defendant denies knowledge or information sufficient to form a belief as to whether Plaintiff “has a PhD in physics”, admits that AIP employed Plaintiff from on or about March 17, 1981, through on or about May 31, 2000 and denies the remaining allegations contained in paragraph 5.

6. Defendant denies the allegations contained in paragraph 6.

7. Defendant denies the allegations contained in paragraph 7.

8. Defendant denies the allegations contained in paragraph 8.

9. Defendant denies the allegations contained in paragraph 9.

10. Defendant denies the allegations contained in paragraph 10.

11. Defendant denies the allegations contained in paragraph 11.

AS TO “FIRST CAUSE OF ACTION—BREACH OF CONTRACT”

12. Defendant repeats and incorporates by this reference all denials, admissions and other responses to the allegations contained in the paragraphs 1 through 11 above, as if said statements were repeated herein at length and denies all allegations not admitted unequivocally in this Answer.

13. Defendant denies the allegations contained in paragraph 13.

14. Defendant denies the allegations contained in paragraph 14.

15. Defendant denies that Plaintiff is entitled to any damages, relief or judgment whatsoever, as demanded in the “Wherefore” paragraphs asserted under the “First cause of action—Breach of Contract.”

AS TO “SECOND CAUSE OF ACTION – BREACH OF ORAL CONTRACT”

16. Defendant repeats and incorporates by this reference all denials, admissions and other responses to the allegations contained in the paragraphs 1 through 15

above, as if said statements were repeated herein at length and denies all allegations not admitted unequivocally in this Answer.

17. Defendant denies the allegations contained in paragraph 16, and further states that the allegations contained in paragraph 7 of the Complaint speak for themselves, and all allegations therein are denied by Defendant.

18. Defendant denies the allegations contained in paragraph 17.

19. Defendant denies the allegations contained in paragraph 18.

20. Defendant denies that Plaintiff is entitled to any damages, relief or judgment whatsoever as demanded in the “Wherefore” paragraphs asserted under the “Second cause of action—Breach of Oral Contract.”

AS TO “THIRD CAUSE OF ACTION – DETRIMENTAL RELIANCE”

21. Defendant repeats and incorporates by this reference all denials, admissions and other responses to the allegations contained in the paragraphs 1 through 20 above, as if said statements were repeated herein at length and denies all allegations not admitted unequivocally in this Answer.

22. Defendant denies the allegations contained in paragraph 20, and further states that the allegations contained in paragraphs 6, 7 and 8 of the Complaint speak for themselves, and all allegations therein are denied by Defendant.

23. Defendant denies the allegations contained in paragraph 21, and further states that the allegations contained in paragraph 9 of the Complaint speak for themselves, which allegations Defendant expressly denies.

24. Defendant denies the allegations contained in paragraph 22.

25. Defendant denies the allegations contained in paragraph 23.

26. Defendant denies that Plaintiff is entitled to any damages, relief or judgment whatsoever as demanded in the “Wherefore” paragraphs asserted under the “Third cause of action—Detrimental Reliance”

AS TO “FOURTH CAUSE OF ACTION—42 U.S.C. §1983”

27. Defendant repeats and incorporates by this reference all denials, admissions and other responses to the allegations contained in paragraphs 1 through 26 above, as if said statements were repeated herein at length and denies all allegations not admitted unequivocally in this Answer.

28. Defendant denies the allegations contained in paragraph 25, and further states that the allegations contained in paragraphs 4 and 11 of the Complaint speak for themselves, which allegations Defendant expressly denies.

29. Defendant denies the allegations contained in paragraph 26.

30. Defendant denies that Plaintiff is entitled to any damages, relief or judgment whatsoever as demanded in the “Wherefore” paragraphs asserted under the “Fourth cause of action—42 U.S.C. §1983”.

AS TO “FIFTH CAUSE OF ACTION—BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING”

31. Defendant repeats and incorporates by this reference all denials, admissions and other responses to the allegations contained in paragraphs 1 through 30 above, as if said statements were repeated herein at length and denies all allegations not admitted unequivocally in this Answer.

32. Defendant denies the allegations contained in paragraph 28. Defendant, moreover, avers that the allegations of paragraph 28 are statements of law to which no response is required, and further denies that Plaintiff was employed by Defendant subject to any contract or covenant.

33. Defendant denies the allegations contained in paragraph 29, and further states that the allegations contained in paragraphs 6, 7 and 8 of the Complaint speak for themselves, which allegations Defendant expressly denies.

34. Defendant denies the allegations contained in paragraph 30, and further states that the allegations contained in paragraph 13 of the Complaint speak for themselves, which allegations Defendant expressly denies.

35. Defendant denies the allegations contained in paragraph 31.

36. Defendant denies that Plaintiff is entitled to any damages, relief or judgment whatsoever as demanded in the “Wherefore” paragraphs asserted under the “Fifth cause of action—Breach of Covenant of Good Faith and Fair Dealing”.

AS TO “SIXTH CAUSE OF ACTION—VIOLATION OF DUE PROCESS”

37. Defendant repeats and incorporates by this reference all denials, admissions and other responses to the allegations contained in paragraphs 1 through 36 above, as if said statements were repeated herein at length and denies all allegations not admitted unequivocally in this Answer.

38. Defendant denies the allegations contained in paragraph 33.

39. Defendant denies the allegations contained in paragraph 34.

40. Defendant denies that Plaintiff is entitled to any damages, relief or judgment whatsoever as demanded in the “Wherefore” paragraphs asserted under the “Sixth cause of action—Violation of Due Process”.

**AS TO “SEVENTH CAUSE OF ACTION – INTENTIONAL INFLICTION
OF EMOTIONAL DISTRESS”**

41. Defendant repeats and incorporates by this reference all denials, admissions and other responses to the allegations contained in paragraphs 1 through 40 above, as

if said statements were repeated herein at length and denies all allegations not admitted unequivocally in this Answer.

42. Defendant denies the allegations contained in paragraph 36, and further states that the allegations contained in paragraph 11 of the Complaint speak for themselves, which allegations Defendant expressly denies.

43. Defendant denies the allegations contained in paragraph 37.

44. Defendant denies the allegations contained in paragraph 38.

45. Defendant denies that Plaintiff is entitled to any damages, relief or judgment whatsoever as demanded in the “Wherefore” paragraphs asserted under the “Seventh cause of action—Intentional Infliction of Emotional Distress”.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

46. The Complaint, and each Cause of Action therein, should be dismissed for failure to state a cause of action.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

47. To the extent that Plaintiff has failed to mitigate his alleged damages, any relief awarded upon his claims must be diminished, in whole or in part, due to his failure to make diligent and good faith efforts to mitigate his alleged damages.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

48. The Complaint should be dismissed because Defendant did not enter into an oral or written agreement containing terms alleged in the Complaint, and, because neither any alleged agreement nor any note or memorandum thereof was made in writing and subscribed to by Defendant, Plaintiff’s claims are barred by the Statute of Frauds.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

49. Defendant has fully performed all obligations under any agreement, written or oral, with Plaintiff.

AS AND FOR AN FIFTH AFFIRMATIVE DEFENSE

50. At all times relevant hereto, Defendant acted in good faith toward Plaintiff and did not violate any rights which may be secured to Plaintiff under federal, state or local laws, rules, regulations or guidelines.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

51. Plaintiff's claims are barred, in whole or in part, by the applicable statutes of limitation or the doctrine of laches.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

52. The Complaint must be dismissed because of Plaintiff's intentional or other misconduct and misrepresentations.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

53. To the extent that Plaintiff engaged in misconduct prior to his application for employment, or during his employment with Defendant, which misconduct would have resulted in denial of employment or in his discharge had said acts or omissions been known to Defendant, any relief awarded to Plaintiff should be reduced, in whole or in part, due to Plaintiff having engaged in such misconduct.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

54. To the extent that Plaintiff has failed to fulfill the jurisdictional prerequisites to suit, Plaintiff's claims must be dismissed.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

55. Since Plaintiff's Complaint is based on an alleged breach of contract, Plaintiff cannot recover legal fees, punitive damages or compensatory damages.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

56. To the extent that Plaintiff's claims are compensable under the applicable State's or locality's Workers' Compensation Law, those claims are barred by the exclusive remedy provision of that law.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

57. Plaintiff's causes of action alleging violation of 42 U.S.C. §1983 or "due process" should be dismissed for failure to state a claim upon which relief can be granted because Defendant is not an entity that acted under color of state law with respect to Plaintiff.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

58. Plaintiff was, at all times, an at-will employee, having no contractual or quasi-contractual entitlement and, as such, all contract and other claims should be dismissed.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

59. Any and all actions taken by Defendant with regard to Plaintiff's employment, or the terms or conditions thereof, were undertaken in good faith and based on legitimate business reasons.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

60. Venue is improper.

Dated: August 27, 2003

JACKSON LEWIS LLP

Attorneys for Defendant

8614 Westwood Center Drive, Suite 950

Vienna, Virginia 22182

Telephone: 703-821-2189

Facsimile: 703-821-2267

By: /s/

Wendy J. Mellk

(*pro hac vice* admission to be made)

Teresa Burke Wright (DC Bar No. 429196)

CERTIFICATE OF SERVICE

I hereby certify that, on this 27th day of August, 2003, I caused a true and correct copy of the enclosed *Defendant's First Amended Answer to Plaintiff's Complaint* to be served, via First-Class Mail, by depositing said copy into an official U.S. Postal Service depository addressed as follows:

JEFF SCHMIDT
3003 Van Ness Street, NW
#W406
Washington, DC 20008
PLAINTIFF PRO SE

/s/
Teresa Burke Wright